



## Hearing Health and Safety

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Notice.

**SUMMARY:** Beginning on January 3, 2022, the Federal Mine Safety and Health Review Commission (the “Commission” or “FMSHRC”) resumed in-person hearings in the manner described in an order dated December 3, 2021, appearing in the Federal Register on December 9, 2021, and posted on the Commission’s website ([www.fmshrc.gov](http://www.fmshrc.gov)). On July 11, 2022, Commission Chief Administrative Law Judge Glynn F. Voisin issued an order, which modifies the December 3 order. The July 11 order is posted on the Commission’s website and contains hyperlinks not included within this notice.

**DATES:** Applicable: July 11, 2022.

**FOR FURTHER INFORMATION CONTACT:** Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434-9935.

### SUPPLEMENTARY INFORMATION:

Commission Administrative Law Judges are committed to a high standard to protect the health and safety of all persons who may appear before them, during the Coronavirus 2019 (COVID-19) pandemic, while continuing the agency’s mission. By order dated December 3, 2021, which was published in the Federal Register (86 Fed. Reg. 70126 (Dec. 9, 2021) and posted on the Commission’s website, the Commission resumed in-person hearings as of January 3, 2022. On July 11, 2022, the Chief Judge issued an order modifying the December 3 order. The contents of the July 11 order are set forth in this notice, and for the duration of the July 11 order, all hearings are subject to its terms.

Commission Judges may, at their sole discretion, hold remote hearings (e.g. via Zoom) and in-person hearings. Judges also have the discretion to hold a hybrid hearing, that includes both in-person and video participation. Commission Judges shall exercise this discretion within uniform parameters as set forth herein. Each Judge shall determine (1) when to use remote hearings in lieu of in-person hearings and (2) specific safety procedures to be used at a hybrid or in-person hearing.

In determining the type of hearing, Judges will consider current guidance and safety factors on a case-by-case basis. Judges will ensure all parties appearing pro se who are required to participate in a remote hearing have access to equipment, an internet connection, and other appropriate technology. Prior to conducting an in-person hearing, Judges will schedule a conference call with the attorneys and representatives of each of the parties to discuss, among other things, safety considerations for the in-person hearing. Persons who are not comfortable with travel or appearing in person, may request to attend the hearing via remote access (e.g. via Zoom). Judges may discuss the agency's workplace safety plan that outlines travel guidelines, protocols, and safety measures in conjunction with the CDC Community Levels.

The Judge will set a hearing location after considering CDC Community Levels using the CDC COVID Data Tracker and the safety and health rules currently in place by the state and local public health entities. Where community levels are HIGH, Judges are discouraged from setting in-person hearings. If in-person participants are traveling to attend a hearing, the community levels of where they are traveling from need to be taken into account as well. In choosing a courtroom, the Judge will take into consideration the rules and requirements of the court or hearing facility, as well as all applicable federal, state, and local regulations and guidelines. If the hearing is to be a hybrid hearing, the

Judge will also consider the availability of internet and technology needs in the courtroom.

During the prehearing conference, the Judge will consider federal, state, local and courtroom requirements and inform the parties of such requirements. The requirements apply to all persons attending the in-person hearing. The discussion will also address who may enter the courtroom, when, and what safety measures, such as masks and physical distancing, must be implemented. No person may enter the courtroom, or the witness room without the permission of the Judge.

In addition to any federal, state, local and facility safety and health rules, all persons attending in-person hearings are also subject to the below requirements:

- **FMSHRC employees:**
  - All FMSHRC employees must adhere to the workplace safety plan and CDC guidance on physical distancing, mask wearing, vaccination attestation, and testing as well as quarantine, isolation, and official travel requirements. The employee vaccination requirement in Executive Order 14043 and the contractor vaccination requirement in Executive Order 14042 are the subject of an injunction issued by a Federal court. In accordance with OMB Guidance, and pending further notice, FMSHRC will take no action to enforce the vaccination requirements in those executive orders. The Office of the Chief Administrative Law Judge will continue to monitor developments on this issue and will comply with current vaccination policies.
- **Visitors and Contractors:**
  - Visitors are defined as federal employees from other agencies such as the Department of Labor, spectators, and press. Contractors, for purposes of this

order, are defined as individuals who have been contracted by FMSHRC to attend an in-person hearing for a specific purpose (e.g. a court reporter creating a transcript).

- Visitors and contractors must attest to their vaccination status using the Certificate of Vaccination Form when Community Levels are MEDIUM or HIGH. The vaccination attestation form can be found on the Safer Federal Workforce website at <https://www.saferfederalworkforce.gov/downloads/CertificationVaccinationPRAv7.pdf>. Visitors and contractors who are considered not fully vaccinated (as defined by the CDC) shall show proof of a negative COVID-19 test result from a Food and Drug Administration authorized test taken within three days prior to entry to the in-person hearing when Community Levels are MEDIUM or HIGH. The Judge shall neither collect documentation to verify their vaccination attestation nor collect documentation to verify COVID-19 test results. Additionally, all visitors and contractors must adhere to the agency's workplace safety plan and CDC guidance on physical distancing and mask wearing.

- **Non-government Parties, Representatives and Witnesses:**

- Persons who are not visitors or contractors as defined above, and who are parties, representatives of parties, or witnesses do not need to attest to their vaccination status to attend an in-person FMSHRC hearing, and Judges shall not inquire into their vaccination status. However, they must adhere to the agency's workplace safety plan and CDC guidance on physical distancing and mask wearing.

Furthermore, in the event an in-person hearing is held in a location where the CDC Community Level is MEDIUM or HIGH, all persons attending the hearing, including visitors and contractors, as well as non-government parties, representatives, and witnesses, must present a completed FMSHRC COVID-19 Screening Tool form for review. The FMSHRC COVID-19 Screening Tool form is available in Appendix C of the agency's workplace safety plan. Individuals who plan to attend a hearing can also obtain a copy of the form by contacting a Judge's office.

The Judge may consider all factors, in totality, in determining if a remote hearing will be held and who may be present for the hearing. No single factor is dispositive.

These procedures shall remain in place until the July 11 order is vacated or otherwise modified by subsequent order.

Authority: 30 U.S.C. 823; 29 CFR part 2700.

Dated: July 12, 2022.

Sarah L. Stewart,

Deputy General Counsel,

Federal Mine Safety and Health Review Commission.

Billing Code 6735-01

[FR Doc. 2022-15277 Filed: 7/15/2022 8:45 am; Publication Date: 7/18/2022]